

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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R.R. and D.R. o/b/o M.R.,  
Plaintiffs-Appellants,

**AFFIDAVIT OF  
JENNIFER M. FRANKOLA**

--against--

**08 CV 0247 (BSJ) (FM)**

SCARSDALE UNION FREE SCHOOL DISTRICT,  
Defendant-Appellee.

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STATE OF NEW YORK  
COUNTY OF NEW YORK

JENNIFER M. FRANKOLA, being duly sworn, deposes and says:

1. I am a law clerk and law graduate awaiting admission<sup>1</sup> at Mayerson & Associates, counsel to plaintiffs M.R. and her parents, R.R. and D.R. I have worked closely on this case since March 2008 to present. As such, I possess the knowledge of the facts and circumstances surrounding this proceeding. I make this Affidavit in response to Defendant's Motion and Affidavit dated July 30, 2008.

2. Plaintiffs commenced this proceeding by filing of a Summons and Complaint on January 11, 2008. This action was then assigned to Honorable Barbara Jones, U.S.D.J. and Honorable Frank Maas, U.S.M.J. Defendant-appellee was served with process on or about January 11, 2008.

3. On March 24, 2008, plaintiffs-appellants submitted a letter to this Court setting forth a proposed Scheduling Order for this action, as requested by the Court. In this proposed Scheduling Order, plaintiffs-appellants made clear that the respective parties were submitting their motion papers for an IDEA-based modified *de novo* review. Plaintiffs-appellants even

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<sup>1</sup> I passed the New York State Bar Examination and have submitted all the required papers.

indicated in a footnote that, “these motions were not truly “summary judgment” motions as the trial had already occurred.” (See Exhibit “A” attached hereto.) Magistrate Maas endorsed plaintiffs-appellants’ letter<sup>2</sup> as the Scheduling Order and canceled the previously scheduled Case Management Conference.

4. In subsequent letters to the Court requesting adjournments dated May 23, May 29, and June 10, 2008, plaintiffs-appellants reiterated that the motions were being submitted as motions for modified *de novo* review. (See Exhibit “B” attached hereto.)

5. On June 30, 2008, I served plaintiffs-appellants’ respective memorandum of law on the motions for modified *de novo* review, the Affidavit of Gary S. Mayerson, and Exhibits A-D. I made service on Stephanie Roebuck, Esq. via e-mail and Federal Express as previously consented by defendant-appellee’s counsel. After reading Magistrate Maas’ and Judge Jones’ rules, I sent a copy of our papers via hand delivery to Magistrate Maas’ chambers and to the Clerk of Court. My understand of Judge Jones’ rules is that only one courtesy copy all motion papers should be submitted by the moving party to Judge Jones’ Chambers only after all reply papers have been fully briefed and filed.

6. On June 30, 2008, I also *attempted* to file via ECF, but was unable to access the ECF system for the Southern District of New York that afternoon due to computer problems that day in our office. After reading Magistrate Maas’ rules that stated, “motion papers shall be filed promptly after service,” I called Magistrate Maas’ chambers and asked if I could file via ECF the next day since I was having computer difficulties that evening. The clerk I spoke to told me that as long as I filed our papers within a day, then it would be sufficient. On June 30, 2008 I sent our papers via e-mail and had a legal intern, Kate Goldwasser, also send a facsimile to Stephanie Roebuck, Esq. just in case the e-mail did not go through. Both the facsimile and the e-mail were

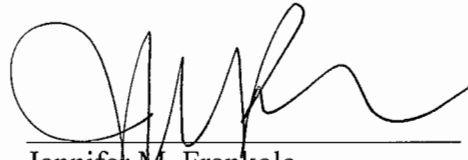
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<sup>2</sup> Accordingly, as the authorities set forth in the accompanying memorandum of law (e.g., Lillibask) the “label” that defendant-appellee assigned for its own motion is neither controlling nor appropriate.

successful in their transmission. (See Exhibit "C" attached hereto.) On July 1, 2008, i.e., the very next morning, I successfully filed our motion papers via ECF. (See Exhibit "D" attached hereto.)

7. It should be noted, too, that the Court's ECF system does not have a listed, specific procedural mechanism for plaintiffs-appellants to file motions seeking an IDEA-based modified *de novo* review. The closest title I could closely relate plaintiffs-appellants' motion to was to a motion for summary judgment. At all times, however, plaintiffs-appellants' motions were labeled as motions for modified *de novo* review. The accompanying memorandum of law denotes that, as a matter of law, this is not a true motion for summary judgment requiring a Rule 56.1 Statement.

8. As stated in our previous submissions, and in view of the applicable standard of review and the foregoing authorities, we ask this Court to rule as a threshold matter that there is no requirement that plaintiffs-appellants submit a Rule 56.1 Statement, either on their own accord or in "response" to defendant's Rule 56.1 Statement. To the extent, if at all, that this Court would rule to the contrary (i.e. that it considers a Rule 56.1 Statement as necessary in an action of this type), we would ask only that this Court give plaintiffs-appellants notice and a reasonable opportunity to make a supplemental submission consisting of a Rule 56.1 Statement.

  
 Jennifer M. Frankola

Sworn to before me this  
8 day of Sept, 2008.

  
 Notary Public

**GARY S. MAYERSON**  
**NOTARY PUBLIC - STATE OF NEW YORK**  
**No. 02MA6165164**  
**QUALIFIED IN NEW YORK COUNTY**  
**COMMISSION EXPIRES MAY 7, 2011**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

R.R. and D.R. o/b/o M.R.,

Plaintiffs-Appellants,

**AFFIDAVIT OF SERVICE**

--against--

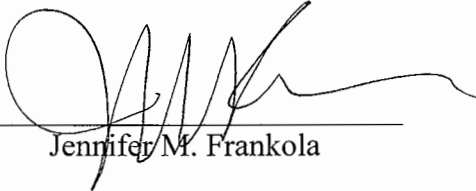
**08 CV 0247 (BSJ) (FM)**

SCARSDALE UNION FREE SCHOOL DISTRICT,

Defendant-Appellee.

---

I, Jennifer M. Frankola, being duly sworn, deposes and says that I am law clerk (pending admission to the NYS Bar) employed by Mayerson & Associates, counsel for plaintiff and that I am over the age of eighteen years; that on the 8<sup>th</sup> day of September at 330 West 38<sup>th</sup> Street, in the city of New York, I timely served copy of the Affidavit of Jennifer M. Frankola with Exhibits A-D, and Plaintiffs-Appellants' Reply Memorandum of Law on Defendant-Appellee via e-mail and Federal Express as consented by defendant's counsel, Stephanie Roebuck, Esq., to the following address: Keane & Beane, P.C., 445 Hamilton Avenue, 15<sup>th</sup> Floor, White Plains, New York 10601 and sroebuck@kblaw.com.

  
\_\_\_\_\_  
Jennifer M. Frankola

Subscribed and sworn to before me  
this 8<sup>th</sup>, day of September, 2008.

  
\_\_\_\_\_  
Notary Public

GARY S. MAYERSON  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 02MA6165164  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MAY 7, 2011

## Mayerson & Associates

330 W. 38<sup>th</sup> Street, Suite 600  
New York, New York 10018

mayerslaw.com

GARY S. MAYERSON \*  
CHRISTINA D. THIVIERGE \*  
RANDI M. ROTHBERG

TEL: 212.265.7200  
FAX: 212.265.1735  
E-MAIL: GARY@MAYERSLAW.COM

\* ALSO ADMITTED IN NEW JERSEY  
\* ALSO ADMITTED IN FLORIDA

March 24, 2008

VIA FACSIMILE & REGULAR MAIL  
Honorable Frank Maas U.S.M.J.  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 20A  
New York, NY 10007-1312

MEMO ENDORSED

Re: R.R. and D.R. o/b/o M.R. v. Scarsdale Union Free School District

Dear Judge Maas: 08 Civ. 247 (BSJ)(FM)

We represent the plaintiffs-appellants in the above matter. We are in receipt of counsel's March 24, 2008 letter to Your Honor.

We agree that there is no need for any discovery and that a waiver of the joint pre-trial order would be appropriate. We would request, however, an earlier briefing schedule, as follows:

June 1, 2008--parties' respective motions  
for modified *de novo* review\*

July 3, 2008--parties' opposing papers

25

July 15, 2008--parties' reply papers

This schedule is adopted  
and the previously scheduled  
conference is cancelled. All  
future communications  
shall bear the full docket  
number of this  
case.

Sincerely,

Gary S. Mayerson

cc: Eric L. Gordon Esq.

1

<sup>1</sup>These motions are not truly "summary judgment" motions as the trial has already occurred.



MEMO ENDORSED

**MAYERSON & ASSOCIATES**

330 WEST 38TH STREET, SUITE 600 • NEW YORK, NEW YORK 10018  
PHONE (212) 265-7200 • FAX (212) 265-1735 • EMAIL: ADMIN@MAYERSLAW.COM

[WWW.MAYERSLAW.COM](http://WWW.MAYERSLAW.COM)

May 23, 2008

**VIA HAND DELIVERY and FACSIMILE<sup>1</sup> APPLICATION GRANTED  
SO ORDERED**

Honorable Frank Maas, U.S.M.J.  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 20A  
New York, NY 10007-1312  
Fax: (212) 805-6724

  
Frank Maas, USMJ 5/29/08

Re: R.R. and D.R. o/b/o M.R. v. Scarsdale UFSD, 08-CV-0247

(BST)(FM)

Dear Judge Maas:

As you are aware, we represent the plaintiffs-appellants in the above referenced matter. We respectfully ask that your Honor endorse this letter requesting a further 2 week extension of time to allow the parties to serve their respective motions for modified *de novo* review. This is plaintiffs-appellants second request for such extension. This would change the original deadline from June 1, 2008 to June 15, 2008.

This change would affect the briefing schedule as follows:

June 15, 2008--parties' respective motions for modified *de novo* review<sup>2</sup>

July 17, 2008--parties' opposing papers

August 8, 2008--parties' reply papers

We have contacted the office of Keane and Beane, P.C., counsel for the defendants, and spoke with Ms. Stephanie M. Roebuck, who has consented to this request.

Thank you for your consideration in this matter.

Sincerely,

  
Gary S. Mayerson

cc: Eric L. Gordon, Esq. and Stephanie M. Roebuck, Esq. via facsimile at (914) 946-6868

<sup>1</sup> Please note that an original letter was sent earlier via hand delivery and did not indicate the facsimile number.

<sup>2</sup> These motions are not truly "summary judgment" motions as the trial has already occurred.

## MEMO ENDORSED

## MAYERSON &amp; ASSOCIATES

330 WEST 38TH STREET, SUITE 600 • NEW YORK, NEW YORK 10018  
PHONE (212) 265-7200 • FAX (212) 265-1735 • EMAIL: ADMIN@MAYERSLAW.COM

[WWW.MAYERSLAW.COM](http://WWW.MAYERSLAW.COM)

May 29, 2008

VIA HAND DELIVERY and FACSIMILE

Honorable Frank Maas, U.S.M.J.  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 20A  
New York, NY 10007-1312  
Fax: (212) 805-6724

APPLICATION GRANTED  
SO ORDERED

  
Frank Maas, USMJ 5/29/08

Re: R.R. and D.R. o/b/o M.R. v. Scarsdale UFSD, 08-CV-0247

Dear Judge Maas:

As you are aware, we represent the plaintiffs-appellants in the above referenced matter. Thank you for endorsing the letter we sent on May 23, 2008. It has just come to our attention that the first deadline we requested for submission of modified *de novo* review, June 15, 2008, inconveniently falls on a Sunday. It is for this reason that we now respectfully ask that your Honor endorse this letter requesting that the date for submission of motions for modified *de novo* review be changed to Monday, June 16, 2008. We do not request that any changes be made to the remaining dates.

This change would affect the briefing schedule as follows:

June 16, 2008--parties' respective motions for modified *de novo* review<sup>1</sup>

July 17, 2008--parties' opposing papers

August 8, 2008--parties' reply papers

We have contacted the office of Keane and Beane, P.C., counsel for the defendants, and Ms. Stephanie M. Roebuck has consented to this request.

Thank you for your consideration in this matter.

Sincerely,

  
Gary S. Mayerson

cc: Eric L. Gordon, Esq. and Stephanie M. Roebuck, Esq. via facsimile at (914) 946-6868

<sup>1</sup>These motions are not truly "summary judgment" motions as the trial has already occurred.

MEMO ENDORSED

**MAYERSON & ASSOCIATES**330 WEST 38TH STREET, SUITE 600 - NEW YORK, NEW YORK 10018  
PHONE (212) 265-7200 • FAX (212) 265-1735 • EMAIL: ADMIN@MAYERSLAW.COMWWW.MAYERSLAW.COM

June 10, 2008

**VIA HAND DELIVERY and FACSIMILE<sup>1</sup>**Honorable Frank Maas, U.S.M.J.  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 20A  
New York, NY 10007-1312  
Fax: (212) 805-6724Approved, but there will be no  
further extensions unless supported  
by an affidavit by a member of  
the firm establishing extraordinary  
circumstances.Re: R.R. and D.R. o/b/o M.R. v. Scarsdale UFSD, 08-CV-0247F. Maas, USMJ,  
6/10/08

Dear Judge Maas:

As you are aware, we represent the plaintiffs-appellants in the above referenced matter. We respectfully ask that your Honor endorse this letter requesting a further 2 week extension of time to allow the parties to serve their respective motions for modified *de novo* review. This is plaintiffs-appellants third request for such extension. We sincerely apologize for requesting yet another extension, and appreciate the court's and opposing counsel's understanding that we make these requests because of the impact that the recent loss of two experienced associates has had on our firm.

This extension would change the last set deadline from June 16, 2008 to June 30, 2008 and would affect the briefing schedule as follows:

June 30, 2008--parties' respective motions for modified *de novo* review<sup>2</sup>

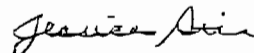
July 30, 2008--parties' opposing papers

August 21, 2008--parties' reply papers

We have contacted the office of Keane and Beane, P.C., counsel for the defendants, and spoke with Ms. Stephanie M. Roebuck, who has consented to this request.

Thank you for your consideration in this matter.

Sincerely,

Jessica Stein  
Legal Intern

cc: Eric L. Gordon, Esq. and Stephanie M. Roebuck, Esq. via facsimile at (914) 946-6868

<sup>1</sup> Please note that an original letter was sent earlier via hand delivery and did not indicate the facsimile number.<sup>2</sup> These motions are not truly "summary judgment" motions as the trial has already occurred.



## Jennifer Frankola

---

**From:** Roebuck, Stephanie M. [SRoebuck@kblaw.com]  
**Sent:** Monday, June 30, 2008 10:09 AM  
**To:** Jessica Stein  
**Cc:** Jennifer Frankola  
**Subject:** RE: Rifkin Papers

Sure, I will do the same if that is okay with you.

Stephanie Roebuck

Stephanie M. Roebuck  
Keane & Beane, P.C.  
445 Hamilton Avenue, 15th Floor  
White Plains, New York 10601  
914-946-4777 tel  
914-946-6868 fax

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---

**From:** Jessica Stein [mailto:jessica@mayerslaw.com]  
**Sent:** Monday, June 30, 2008 10:08 AM  
**To:** Roebuck, Stephanie M.  
**Cc:** Jennifer Frankola  
**Subject:** Rifkin Papers

Dear Ms. Roebuck:

I am writing on behalf of Mayerson & Associates to respectfully request your permission to send you a copy of the papers we are serving today in regards to the Rifkin case via e-mail as well as by fed-ex (the fed-ex copy should arrive at your office tomorrow).

Please let me know at your earliest convenience. Thank you very much.

Sincerely,

Jessica Stein  
Legal Intern  
Mayerson & Associates

9/8/2008

## Jennifer Frankola

---

**From:** Jennifer Frankola [jennifer@mayerslaw.com]  
**Sent:** Wednesday, July 30, 2008 4:47 PM  
**To:** 'Roebuck, Stephanie M.'; 'Gordon, Eric L.'  
**Cc:** 'mauricio@mayerslaw.com'; 'Jessica Stein'; 'Kate'  
**Subject:** Rifkin v. Scarsdale  
**Attachments:** 7-30-08 response to 56.1 statement.pdf; 7-30-08\_FINAL\_ResponseMemoofLaw[GSM].pdf; 7-30-08\_Letter to Judge Jones.pdf; 7-30-08\_TOCA\_FINAL Response Memo of Law.pdf; 7-30-08 Affidavit of Service- Jessica.pdf

Dear Stephanie:

Attached, please find plaintiffs-appellants' response papers. You will receive copies via facsimile and Fed Ex, too.

Sincerely,

Jennifer

Jennifer Frankola, M.A., J.D.  
Mayerson and Associates  
330 West 38th Street  
Suite 600  
New York, New York 10018  
212.265.7200  
212.265.1735 Fax  
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---

**From:** Roebuck, Stephanie M. [mailto:SRoebuck@kblaw.com]  
**Sent:** Monday, June 30, 2008 10:09 AM  
**To:** Jessica Stein  
**Cc:** Jennifer Frankola  
**Subject:** RE: Rifkin Papers

Sure, I will do the same if that is okay with you.

Stephanie Roebuck

Stephanie M. Roebuck  
Keane & Beane, P.C.  
445 Hamilton Avenue, 15th Floor  
White Plains, New York 10601

9/8/2008

914-946-4777 tel  
914-946-6868 fax

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---

**From:** Jessica Stein [mailto:jessica@mayerslaw.com]  
**Sent:** Monday, June 30, 2008 10:08 AM  
**To:** Roebuck, Stephanie M.  
**Cc:** Jennifer Frankola  
**Subject:** Rifkin Papers

Dear Ms. Roebuck:

I am writing on behalf of Mayerson & Associates to respectfully request your permission to send you a copy of the papers we are serving today in regards to the Rifkin case via e-mail as well as by fed-ex (the fed-ex copy should arrive at your office tomorrow).

Please let me know at your earliest convenience. Thank you very much.

Sincerely,

Jessica Stein  
Legal Intern  
Mayerson & Associates

9/8/2008

**Jennifer Frankola**

---

**From:** Gordon, Eric L. [EGordon@kblaw.com]  
**Sent:** Monday, June 30, 2008 5:02 PM  
**To:** Mauricio Bertone  
**Cc:** Jennifer Frankola  
**Subject:** RE: 6-30-08\_R.R. and D.R. obo M.R. v. Scarsdale UFSD\_Motion  
**Attachments:** Memorandum of Law.pdf; Rule 56.1 Statement.pdf; Mendelson Affidavit.pdf; Exhibit A.pdf; Notice of Motion.pdf

Here are the documents in support of the Scarsdale UFSD's motion for summary judgment. They have been filed on ECF and Stephanie Roebuck is forwarding a hard copy by Federal Express.

*Eric L. Gordon*  
Keane & Beane, P.C.  
445 Hamilton Avenue  
White Plains, NY 10601  
(914) 946-4777 (telephone)  
(914) 946-6868 (facsimile)

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---

**From:** Mauricio Bertone [mailto:mauricio@mayerslaw.com]  
**Sent:** Monday, June 30, 2008 4:48 PM  
**To:** Gordon, Eric L.; Roebuck, Stephanie M.  
**Cc:** 'Jennifer Frankola'  
**Subject:** FW: 6-30-08\_R.R. and D.R. obo M.R. v. Scarsdale UFSD\_Motion

-----Original Message-----

**From:** Jennifer Frankola [mailto:jennifer@mayerslaw.com]  
**Sent:** Monday, June 30, 2008 4:39 PM  
**To:** sroebuck@kblaw.com  
**Cc:** 'Mauricio Bertone'  
**Subject:** 6-30-08\_R.R. and D.R. obo M.R. v. Scarsdale UFSD\_Motion

Hi Stephanie:

Attached, please find plaintiffs Cover Letter to Judge Maas, Notice of Motion for Modified De Novo Review, Affidavit of Service, Affidavit of Gary S. Mayerson with attached Exhibits A-E, and Plaintiffs-Appellants Memorandum of Law on Modified De Novo Review with Table of Contents and Authorities.

9/8/2008

I have also sent you copies via Fed Ex. They should arrive shortly. If you have any problems opening the attached documents, please feel free to call me.

Thanks.

Jennifer

Jennifer Frankola, M.A., J.D.  
Mayerson and Associates  
330 West 38th Street  
Suite 600  
New York, New York 10018  
212.265.7200  
212.265.1735 Fax  
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---

Mauricio Bertone  
Mayerson and Associates  
330 West 38th Street  
Suite 600  
New York, New York 10018  
212.265.7200  
212.265.1735 Fax  
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9/8/2008



\*\*\*\*\*  
\*\*\* FAX TX REPORT \*\*\*  
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PGS.	36
RESULT	OK

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Suite 600  
New York, New York 10018  
(212) 265-7200  
(212) 265-1735 (fax)

**Mayerson &  
Associates**

# Fax

<b>To:</b>	Stephanie Roebuck, Esq.	<b>From:</b>	Kate Goldwasser, Legal Intern
<b>Fax:</b>	Fax (914) 946-6868	<b>Pages:</b>	36 (Including this cover)
<b>Phone:</b>		<b>Date:</b>	July 30, 2008
<b>Re:</b>	R.R. & D.R. o/b/o M.R. v. Scarsdale U.F.S.D.	<b>CC:</b>	

☐ Urgent    ☒ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

Please see following.

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330 W. 38<sup>th</sup> Street  
Suite 600  
New York, New York 10018  
(212) 265-7200  
(212) 265-1735 (fax)

**Mayerson &  
Associates**

# Fax

<b>To:</b>	Stephanie Roebuck, Esq.	<b>From:</b>	Kate Goldwasser, Legal Intern
<b>Fax:</b>	Fax (914) 946-6868	<b>Pages:</b>	36 (Including this cover)
<b>Phone:</b>		<b>Date:</b>	July 30, 2008
<b>Re:</b>	R.R. & D.R. o/b/o M.R. v. Scarsdale U.F.S.D.	<b>CC:</b>	

☐ **Urgent**    ☒ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

Please see following.

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## MAYERSON & ASSOCIATES

330 WEST 38TH STREET, SUITE 600 • NEW YORK, NEW YORK 10018  
PHONE (212) 265-7200 • FAX (212) 265-1735 • EMAIL: ADMIN@MAYERSLAW.COM

WWW.MAYERSLAW.COM

June 30, 2008

### VIA HAND DELIVERY

Honorable Frank Maas, U.S.M.J.  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 20A  
New York, NY 10007-1312  
Fax: (212) 805-6724

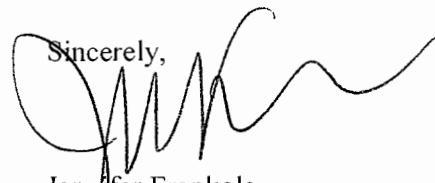
**Re: R.R. and D.R. o/b/o M.R. v. Scarsdale UFSD, 08-CV-0247 (BSJ) (FM)**

Dear Judge Maas:

We represent the plaintiffs-appellants in the above referenced matter. Enclosed, please find courtesy copies of plaintiff-appellants' Notice of Motion for Modified *De Novo* Review, Affidavit of Service, Affidavit of Gary S. Mayerson, and Plaintiffs-Appellants' Memorandum of Law on Modified *De Novo* Review which were served on defendant's counsel via e-mail and Federal Express and filed via ECF.

Similarly, courtesy copies were sent to the Clerk of Court and will be sent to Judge Barbara S. Jones, U.S.D.J., once fully briefed.

Sincerely,



Jennifer Frankola  
(Awaiting Admission to NYS Bar)

- cc: J. Michael McMahon, Clerk of Court (via hand delivery)  
U.S. District Court, Southern District of New York  
500 Pearl Street  
New York, New York 10007
- cc: Stephanie Roebuck, Esq. and Eric L. Gordon, Esq. (Counsels for Defendant)  
445 Hamilton Ave., 15<sup>th</sup> Floor  
White Plains, New York 10601

## MAYERSON & ASSOCIATES

330 WEST 38TH STREET, SUITE 600 • NEW YORK, NEW YORK 10018  
PHONE (212) 265-7200 • FAX (212) 265-1735 • EMAIL: ADMIN@MAYERSLAW.COM

WWW.MAYERSLAW.COM

July 1, 2008

**VIA HAND DELIVERY**

J. Michael McMahon  
Clerk of Court  
U.S. District Court, Southern District of New York  
500 Pearl Street  
New York, New York 10007

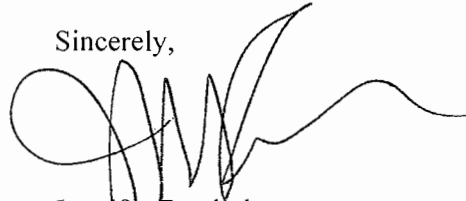
**Re: R.R. and D.R. o/b/o M.R. v. Scarsdale UFSD, 08-CV-0247 (BSJ) (FM)**

Dear Clerk McMahon:

We represent the plaintiffs-appellants in the above referenced matter. As per Hon. Barbara S. Jones' rules, enclosed, please find courtesy copies of plaintiff-appellants' Notice of Motion for Modified *De Novo* Review, Affidavit of Service, Affidavit of Gary S. Mayerson, and Plaintiffs-Appellants' Memorandum of Law on Modified *De Novo* Review which were served on defendant's counsel via e-mail and Federal Express and filed via ECF.

Please do not hesitate to contact us if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer Frankola', with a large, stylized initial 'J' and a long, sweeping horizontal line extending to the right.

Jennifer Frankola  
(Awaiting Admission to NY Bar)

## MAYERSON & ASSOCIATES

330 WEST 38TH STREET, SUITE 600 • NEW YORK, NEW YORK 10018  
PHONE: (212) 265-7200 • FAX (212) 265-1735 • EMAIL: ADMIN@MAYERSLAW.COM

WWW.MAYERSLAW.COM

June 30, 2008

**VIA FEDERAL EXPRESS**

Stephanie Roebuck, Esq.  
Eric L. Gordon, Esq.  
445 Hamilton Ave., 15<sup>th</sup> Floor  
White Plains, New York 10601

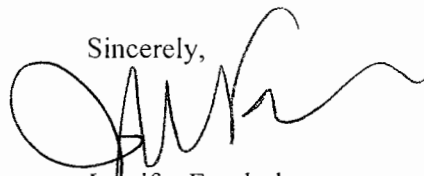
**Re: R.R. and D.R. o/b/o M.R. v. Scarsdale UFSD, 08-CV-0247 (BSJ) (FM)**

Dear Ms. Roebuck and Mr. Gordon:

Enclosed, please find copies of plaintiff-appellants' Notice of Motion for Modified *De Novo* Review, Affidavit of Service, Affidavit of Gary S. Mayerson, and Plaintiffs-Appellants' Memorandum of Law on Modified *De Novo*.

Please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Frankola', with a stylized flourish extending to the right.

Jennifer Frankola  
(Awaiting Admission to NYS Bar)



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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R.R. and D.R. o/b/o M.R.,

Plaintiffs-Appellants,

**AFFIDAVIT OF SERVICE**

--against--

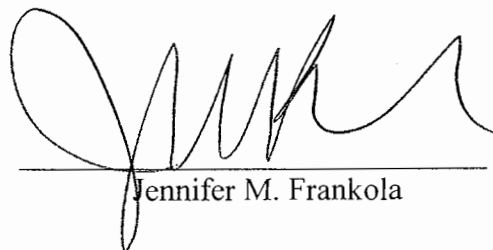
**08 CV 0247 (BSJ) (FM)**

SCARSDALE UNION FREE SCHOOL DISTRICT,

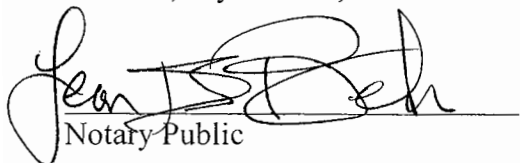
Defendant-Appellee.


---

I, Jennifer M. Frankola, being duly sworn, deposes and says that I am law clerk (pending admission to the NYS Bar) employed by Mayerson & Associates, counsel for plaintiff and that I am over the age of eighteen years; that on the 30<sup>th</sup> day of June at 330 West 38<sup>th</sup> Street, in the city of New York, I timely served copy of the Notice of Motion for Modified *De Novo* Review on Appeal, Affidavit of Gary S. Mayerson (with attached exhibits A, B, and C), and Plaintiffs-Appellants' Memorandum of Law on Defendant-Appellee via e-mail and Federal Express as consented by defendant's counsel, Stephanie Roebuck, Esq., to the following address: Keane & Beane, P.C., 445 Hamilton Avenue, 15<sup>th</sup> Floor, White Plains, New York 10601 and sroebuck@kblaw.com.

  
Jennifer M. Frankola

Subscribed and sworn to before me  
this 30<sup>th</sup>, day of June, 2008.

  
Notary Public

LEON ISIDORE BEHAR  
Notary Public, State of New York  
No. 02BE4781657  
Qualified in Nassau County  
Commission Expires June 30, 2011 

CASREF, ECF

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-00247-BSJ-FM**

R.R. et al v. Scarsdale Union Free School Distrtict  
Assigned to: Judge Barbara S. Jones  
Referred to: Magistrate Judge Frank Maas  
Cause: 42:1983 Civil Rights Act

Date Filed: 01/11/2008  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff****R.R.**

represented by **Gary S Mayerson**  
Mayerson & Associates  
330 West 38 Street  
Suite 600  
New York, NY 10018  
(212) 265-7200  
Fax: (212) 265-1735  
Email: gary@mayerslaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**D.R.**  
*on behalf of*  
**M.R.**

represented by **Gary S Mayerson**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**V.****Defendant****Scarsdale Union Free School Disrtict**

represented by **Eric Lewis Gordon**  
Keane & Beane, P.C.  
445 Hamilton Avenue  
15th Floor  
White Plains, NY 10601  
(914) 946-4777  
Fax: (914) 946-6868  
Email: egordon@kblaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text

01/11/2008	<u>1</u>	COMPLAINT against Scarsdale Union Free School Distrtict. (Filing Fee \$ 350.00, Receipt Number 638034)Document filed by R.R., D.R..(mbe) (mbe). (Entered: 01/14/2008)
01/11/2008		SUMMONS ISSUED as to Scarsdale Union Free School Distrtict. (mbe) (Entered: 01/14/2008)
01/11/2008		Magistrate Judge Frank Maas is so designated. (mbe) (Entered: 01/14/2008)
01/11/2008		Case Designated ECF. (mbe) (Entered: 01/14/2008)
01/25/2008	<u>2</u>	AFFIDAVIT OF SERVICE of Summons and Complaint. Scarsdale Union Free School Distrtict served on 1/17/2008, answer due 2/6/2008. Service was accepted by Jeffrey Martin, Treasurer. Document filed by R.R.; D.R.. (Mayerson, Gary) (Entered: 01/25/2008)
02/01/2008	<u>3</u>	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Frank Maas. (Signed by Judge Barbara S. Jones on 1/31/2008) (jmi) (Entered: 02/04/2008)
02/06/2008	<u>4</u>	ANSWER to Complaint. Document filed by Scarsdale Union Free School Distrtict.(Gordon, Eric) (Entered: 02/06/2008)
02/15/2008	<u>5</u>	ORDER FOR CONFERENCE PURSUANT TO RULE 16(a). that this action is scheduled for an initial Case Management Conference pursuant to Fed. R. Civ. P. 16(a), on 3/27/2008 at 02:00 PM in Courtroom 20A, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Frank Maas. The parties must be prepared to discuss the subjects that are set forth in subdivisions (b) and (c) of Rule 16. (Signed by Magistrate Judge Frank Maas on 2/15/08) (pl) (Entered: 02/15/2008)
03/26/2008	<u>6</u>	ENDORSED LETTER addressed to Magistrate Judge Frank Maas from Gary S. Mayerson dated 3/24/08 re: Counsel for Plaintiffs-appellants request a briefing schedule as follows: Parties respective motions for modified de novo review due by 6/1/08. Parties' opposing papers due by 7/3/08. Parties reply papers due by 7/25/08. ENDORSEMENT: This schedule is adopted and the previously scheduled conference is cancelled. All future communications shall bear the full docket number of the case. ( Motions due by 6/1/2008. Responses due by 7/3/2008, Replies due by 7/25/2008.) (Signed by Magistrate Judge Frank Maas on 3/26/08) (tro) (Entered: 03/27/2008)
05/27/2008	<u>7</u>	ENDORSED LETTER addressed to Magistrate Judge Frank Maas from Gary Mayerson dated 5/23/08 re: Request that the new briefing schedule be: 6/15/08 for parties' respective motions for modified de novo review; 6/17/08 parties' opposing papers; 8/8/08 parties' reply papers. ENDORSEMENT: Application granted. ( Cross Motion due by 6/15/2008. Motion due by 6/15/2008. Responses due by 7/17/2008. Replies due by 8/8/2008.) (Signed by Magistrate Judge Frank Maas on 5/27/08) (cd) (Entered: 05/28/2008)
05/29/2008	<u>8</u>	ENDORSED LETTER addressed to Magistrate Judge Frank Maas from Gary Mayerson dated 5/29/08 re: Request to modify the briefing schedule as follows:



		6/16/08 parties respective motions for modified de novo review; 7/17/08 parties' opposing papers; 8/8/08 parties' reply papers. ENDORSEMENT: Application granted. ( Motions due by 6/16/2008. Responses due by 7/17/2008. Replies due by 8/8/2008.) (Signed by Magistrate Judge Frank Maas on 5/29/08) (cd) (Entered: 05/30/2008)
06/11/2008	<u>9</u>	ENDORSED LETTER addressed to Magistrate Judge Frank Maas from Jessica Stein dated 6/10/08 re: Counsel writes to request a further 2 week extension of time to allow the parties to serve their respective motions for modified de novo review. This extension would change the last set deadline from June 16, 2008 to June 30, 2008 and would affect the briefing schedule as follows: June 30, 2008-parties' respective motions for modified de novo review; July 30, 2008-parties' opposing papers; August 21, 2008-parties' reply papers. ENDORSEMENT: Approved, but there will be no further extensions unless supported by an affidavit by a member of the firm establishing extraordinary circumstances. (Signed by Magistrate Judge Frank Maas on 6/10/08) (mme) (Entered: 06/11/2008)
06/30/2008	<u>10</u>	CROSS MOTION for Summary Judgment. Document filed by Scarsdale Union Free School Distrtct. Return Date set for 8/22/2008 at 09:00 AM.(Gordon, Eric) (Entered: 06/30/2008)
06/30/2008	<u>11</u>	AFFIDAVIT of Michael Mendelson in Support re: <u>10</u> CROSS MOTION for Summary Judgment.. Document filed by Scarsdale Union Free School Distrtct. (Attachments: # <u>1</u> Exhibit A)(Gordon, Eric) (Entered: 06/30/2008)
06/30/2008	<u>12</u>	RULE 56.1 STATEMENT. Document filed by Scarsdale Union Free School Distrtct. (Gordon, Eric) (Entered: 06/30/2008)
06/30/2008	<u>13</u>	MEMORANDUM OF LAW in Support re: <u>10</u> CROSS MOTION for Summary Judgment.. Document filed by Scarsdale Union Free School Distrtct. (Gordon, Eric) (Entered: 06/30/2008)
07/01/2008	<u>14</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - NOTICE of Motion for Modified DeNovo Review on Appeal. Document filed by R.R., D.R. (Mayerson, Gary) Modified on 7/1/2008 (KA). (Entered: 07/01/2008)
07/01/2008	<u>15</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - MOTION for Summary Judgment (Memorandum of Law on Modified De Novo Review). Document filed by R.R., D.R.(Mayerson, Gary) Modified on 7/1/2008 (KA). (Entered: 07/01/2008)
07/01/2008	<u>16</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - AFFIDAVIT of Gary S. Mayerson in Support re: <u>15</u> MOTION for Summary Judgment (Memorandum of Law on Modified De Novo Review). Document filed by R.R., D.R.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Mayerson, Gary) Modified on 7/1/2008 (KA). (Entered: 07/01/2008)
07/01/2008	<u>17</u>	AFFIDAVIT OF SERVICE of Notice of Motion for Modified De Novo Review on Appeal, Affidavit of Gary Mayerson and Exhibits A,B,C,D,E, and Memorandum of Law on Modified De Novo Review served on Scarsdale Union Free School District on 6/30/08. Service was accepted by Stephanie



		Roebuck, Esq.. Document filed by R.R., D.R.. (Mayerson, Gary) (Entered: 07/01/2008)
07/01/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Gary S. Mayerson to RE-FILE Document <u>14</u> Notice (Other). Use the document type Motion Miscellaneous Relief found under the document list Motions. (KA) (Entered: 07/01/2008)
07/01/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Gary S. Mayerson to RE-FILE Document <u>15</u> MOTION for Summary Judgment (Memorandum of Law on Modified De Novo Review). Use the document type Memorandum of Law in Support of Motion found under the document list Replies, Opposition and Supporting Documents. (KA) (Entered: 07/01/2008)
07/01/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Gary S. Mayerson to RE-FILE Document <u>16</u> Affidavit in Support of Motion. ERROR(S): Link to incorrect filing of document #15. (KA) (Entered: 07/01/2008)
07/01/2008	<u>18</u>	MOTION Notice of Motion for Modified De Novo Review on Appeal. Document filed by R.R., D.R..(Mayerson, Gary) (Entered: 07/01/2008)
07/01/2008	<u>19</u>	MEMORANDUM OF LAW in Support re: <u>18</u> MOTION Notice of Motion for Modified De Novo Review on Appeal.. Document filed by R.R., D.R.. (Mayerson, Gary) (Entered: 07/01/2008)
07/01/2008	<u>20</u>	AFFIDAVIT of Gary S. Mayerson in Support re: <u>18</u> MOTION Notice of Motion for Modified De Novo Review on Appeal.. Document filed by R.R., D.R.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Errata E)(Mayerson, Gary) (Entered: 07/01/2008)
07/02/2008	<u>21</u>	AMENDED MOTION to Amend/Correct <u>18</u> MOTION Notice of Motion for Modified De Novo Review on Appeal.. Document filed by R.R., D.R.. (Mayerson, Gary) (Entered: 07/02/2008)
07/30/2008	<u>22</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - AFFIDAVIT of Eric L. Gordon in Opposition re: <u>10</u> CROSS MOTION for Summary Judgment. Document filed by Scarsdale Union Free School Disrtict. (Attachments: # <u>1</u> Exhibit A - C)(Gordon, Eric) Modified on 8/6/2008 (jar). (Entered: 07/30/2008)
07/30/2008	<u>23</u>	MEMORANDUM OF LAW in Opposition re: <u>21</u> AMENDED MOTION to Amend/Correct <u>18</u> MOTION Notice of Motion for Modified De Novo Review on Appeal... Document filed by Scarsdale Union Free School Disrtict. (Gordon, Eric) (Entered: 07/30/2008)
07/31/2008	<u>24</u>	AFFIDAVIT of Eric L. Gordon in Opposition re: <u>21</u> AMENDED MOTION to Amend/Correct <u>18</u> MOTION Notice of Motion for Modified De Novo Review on Appeal... Document filed by Scarsdale Union Free School Disrtict. (Attachments: # <u>1</u> Exhibit A through C)(Gordon, Eric) (Entered: 07/31/2008)
07/31/2008	<u>25</u>	REPLY MEMORANDUM OF LAW <i>IN FURTHER SUPPORT OF ITS MOTION FOR MODIFIED DE NOVO REVIEW</i> . Document filed by R.R., D.R.. (Mayerson, Gary) (Entered: 07/31/2008)

07/31/2008	<u>26</u>	RESPONSE TO DEFENDANT-APPELLEE'S "RULE 56.1 STATEMENT. Document filed by R.R., D.R.. (Mayerson, Gary) (Entered: 07/31/2008)
07/31/2008	<u>27</u>	AFFIDAVIT OF SERVICE of Reply Memorandum of Law and Plaintiff-Appellant's Response to Defendant-Appellee's Rule 56.1 Statement served on Stephanie Roebuck, Esq. on 7/30/08. Service was made by FEDEX. Document filed by R.R., D.R.. (Mayerson, Gary) (Entered: 07/31/2008)
08/07/2008	<u>28</u>	ORDER For the reasons set forth in this order, the court finds that there is no need for such a threshold determination. Consideration of the motion before the court in this case, including consideration of the issue set forth in this order if relevant, shall be made by the court based on the submissions that have been made, applying the appropriate standards. No initial ruling or further submissions by the parties is necessary at this time and the pending motion remains sub judice. (Signed by Judge Barbara S. Jones on 8/7/08) (mme) (Entered: 08/07/2008)
08/11/2008	<u>29</u>	ENDORSED LETTER addressed to Judge Barbara S. Jones from Stephanie M. Roebuck dated 8/8/08 re: Counsel for defendant requests an adjournment to ensure that all issues, both substantive and procedural are fully addressed in a complete manner. We therefore request this adjournment, until September 8, 2008. ENDORSEMENT: Application GRANTED. So Ordered. (Signed by Judge Barbara S. Jones on 8/8/08) (js) (Entered: 08/11/2008)
08/12/2008	<u>30</u>	ENDORSED LETTER addressed to Judge Barbara S. Jones from Stephanie M. Roebuck dated 8/8/08 re: Counsel requests a short extension of time, on consent of plaintiffs counsel. Counsel request this adjournment, until September 8, 2008. ENDORSEMENT: Application granted. (Signed by Judge Barbara S. Jones on 8/12/08) (mme) (Entered: 08/12/2008)

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